

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

JERMAINE DAWKINS,

Plaintiff,

-against-

9:04-CV-943
(LEK/GJD)

DR. WHALEN, *et al.*,

Defendants.

DECISION AND ORDER

This matter comes before the Court following a Report-Recommendation filed on February 27, 2007 by the Honorable Gustave J. DiBianco, United States Magistrate Judge, pursuant to 28 U.S.C. § 636(b) and L.R. 72.3(c) of the Northern District of New York. Report-Rec. (Dkt. No. 41). After ten days from the service thereof, the Clerk has sent the entire file to the undersigned, including the objections by Plaintiff Jermaine Dawkins, which were filed on March 12, 2007. Objections (Dkt. No. 42).

It is the duty of this Court to “make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made.” 28 U.S.C. § 636(b). “A [district] judge... may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate judge.” *Id.* This Court has considered the objections and has undertaken a de novo review of the record and has determined that the Report-Recommendation should be approved for the reasons stated therein.

Accordingly, it is hereby

ORDERED, that the Report-Recommendation (Dkt. No. 41) is **APPROVED** and **ADOPTED** in its **ENTIRETY**; and it is further

ORDERED, that Defendants' Motion to dismiss (Dkt. No. 34) is **GRANTED ONLY AS TO PLAINTIFF'S CLAIMS AGAINST ALL DEFENDANTS IN THEIR "OFFICIAL CAPACITY;"** and it is further

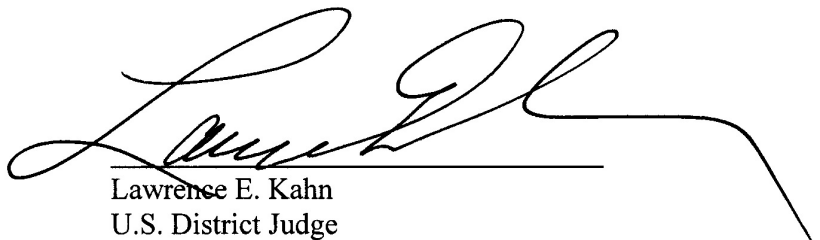
ORDERED, that Defendants' Motion to dismiss (Dkt. No. 34) is **DENIED IN ALL OTHER RESPECTS**; and it is further

ORDERED, that the Complaint (Dkt. No. 1) is **DISMISSED WITHOUT PREJUDICE** for failure to state a claim pursuant to 28 U.S.C. § 1915(e)(2)(B)(ii) as against Defendants **GRANT and DONELLI**; and it is further

ORDERED, that the Clerk serve a copy of this Order on all parties.

IT IS SO ORDERED.

DATED: March 29, 2007
Albany, New York



Lawrence E. Kahn
U.S. District Judge